

EXHIBIT 4-d

1 MR. NEALON: Okay.

2 MR. DESMARAIS: May I make one point just on the
3 fact that, you know, I think Ms. Wetzler at the argument today
4 has already now handed up four new cases. These issues
5 haven't been briefed, Your Honor.

6 THE COURT: I know, but they will be.

7 MR. DESMARAIS: That's what I was going to
8 underscore. Thank you.

9 THE COURT: I am going to take the motion under
10 advisement. Actually, what I want to do is to continue the
11 hearing, if not for two weeks, then perhaps, depending on the
12 least inconvenience to the lawyers involved, I can continue
13 the hearing to Tuesday, November 27, which would save two or
14 three days. That would be at 10 o'clock. Or I can continue
15 it to Friday, the 30th.

16 MS. WETZLER: We have no problem with the 27th, Your
17 Honor.

18 THE COURT: All right. Is there anybody who needs
19 to be here who can't be here on the 27th?

20 MR. DESMARAIS: I am available either the 27th or
21 the 30th.

22 THE COURT: All right. Mr. Nealon?

23 MR. NEALON: Yes, either one is fine.

24 THE COURT: All right. I am going to continue the
25 hearing until 10 o'clock on the 27th. I would like the

1 privilege log issue briefed more thoroughly.

2 And, Mr. Nealon, I don't need lengthy briefs.

3 MR. NEALON: Sure.

4 THE COURT: But I need to see the cases and I need a
5 succinct statement of your positions on what I will call the
6 privilege log issue.

7 I would like something from plaintiffs by close of
8 business Monday.

9 And I would like something from defendants by close
10 of business Tuesday.

11 I saw you raise your eyebrow, Ms. Wetzler. Is that
12 a problem? And you already, you already know what they are
13 going to say.

14 MS. WETZLER: We do. We simply don't know what, I
15 couldn't get down quickly the cases for the privilege log. If
16 it is confined to the privilege log, that shouldn't be a
17 problem. But if it is more broad, then that might be
18 difficult.

19 THE COURT: That's the only thing that I need
20 immediate supplemental briefing on.

21 Mr. Nealon, if you want to file a supplemental
22 memorandum, a brief supplemental memorandum on any other
23 aspect of the present dispute, you can do that by Tuesday.
24 And defendants can respond by the close of business on Monday,
25 the 26th.

1 I am not inviting that, I am just giving you the
2 opportunity if there is anything you want to say that you
3 suddenly wish you had said this morning.

4 Were you raising your hand, Mr. Desmarais?

5 MR. DESMARAIS: No, Your Honor.

6 THE COURT: All right.

7 MR. DESMARAIS: No, thank you.

8 THE COURT: I also want from plaintiffs a detailed
9 statement, back to my question of Mr. Nealon, a detailed
10 statement not what you hope to get in a fishing expedition, a
11 detailed statement of what you expect to get from any of these
12 four proposed deponents or through any document discovery that
13 might be allowed. And I would like that by Tuesday, served
14 by-- I am still not totally accustomed to electronic cases.
15 I mean, you-all take care of service.

16 And reciprocally after defendants get that, I want
17 the defendants to examine in good faith, as I know you will,
18 what you might be willing to provide, perhaps Mr. Price, Mr.
19 Sher, along the lines of what I required in the APA case that
20 was argued last week or the week before. What you would be
21 prepared to let them have to resolve any discovery dispute and
22 would let them do what they think they need to do.

23 You don't need to file anything in writing on that,
24 but if you do have something that you would like me to look at
25 in preparation for the November 27 hearing, I would like that

1 by the 26th. Okay.

2 MS. WETZLER: May I ask one question, Your Honor?

3 THE COURT: Sure.

4 MS. WETZLER: When I had expressed an interest, for
5 example, in responding to the six items that were incomplete
6 and the bad faith issues which you deferred, is that what you
7 would like by the 26th?

8 THE COURT: I will take that-- I want to study what
9 you present before the 27th. I will take that whenever you
10 can get it to me.

11 MS. WETZLER: Yes, sir.

12 THE COURT: You can include it as part of something
13 else or you can file that separately.

14 MS. WETZLER: Thank you.

15 THE COURT: Your choice. All right. Any questions?
16 All right. Happy Thanksgiving to all.

17 I am going to take a recess that is long enough to
18 allow you-all to vacate the well of the court, let the Marshal
19 bring the prisoners up for the criminal docket, and let
20 everybody get where they need to be. When the Marshal tells
21 me that has been done, I will come back on the bench.

22 Court is in recess.

23 NOTE: The hearing is concluded at 12:23 p.m.

24 -----

25

C E R T I F I C A T E o f T R A N S C R I P T I O N

I hereby certify that the foregoing is a true and accurate transcript that was typed by me from the recording provided by the court. Any errors or omissions are due to the inability of the undersigned to hear or understand said recording.

Further, that I am neither counsel for, related to, nor employed by any of the parties to the above-styled action, and that I am not financially or otherwise interested in the outcome of the above-styled action.

Norman B. Linnell
Court Reporter - USDC/EDVA